IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No: 17854 of 2004

Between:

M.V.V. Srinivas S/o. M. Shankar Rao,
Suryaraopet, Vijayawada, Krishna District.

..... PETITIONER

AND

1 The Deputy Commercial Tax Officer No.2, Gudivada, Krishna District.
2 T.S. Rama Prasad S/o. T. Rama Brahmam,
Occ: Proprietor, M/s Sree Laxmi Rama Picture House,

Gudivada, Krishna District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the 1st respondent in issuing the impugned auction notices in Form No.7-A dt. 27.8.2004 proposing to auction the theatre M/s. Sree Laxmi Rama Picture House, Gudivada, Krishna District, without recognizing the petitioner's tenancy as illegal, arbitrary and without authority of law and against the principles of natural justice and set aside the same and declare that any action that can be taken by the 1st respondent in auctioning the theatre is subject to the petitioner's tenancy rights.

Counsel for the Petitioner: MR.BHASKAR REDDY VEMIREDDY

Counsel for the Respondent No.1: GP FOR COMMERCIAL TAX & MR.K.RAJI

REDDY (SPL. S.C. FOR C.T.)

Counsel for the Respondent No.2: MR.B.SRINIVAS

The Court made the following:

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ORAL ORDER:- (PER GB,J.)

The petitioner is the lessee of theatre viz., M/s. Sree Laxmi Rama Picture House, Gudivada, Krishna District. The Sales Tax authorities ensued recovery proceedings of sales tax arrears for the period prior to the lease and directed the petitioner to evict the premises. Thereafter, the petitioner submitted a detailed representation, dated 07.10.2002, bringing to the notice of the 1st respondent about the lease agreement and requested not to proceed with the auction, but the 1st respondent without giving any auction notice to the petitioner, brought the picture house to sale by notification, dated 27.08.2004, proposing to auction the theatre on 05.10.2004. At that point of time, the present Writ Petition has been filed.

2. The learned counsel for the petitioner submits that the petitioner is the registered leaseholder of the theater for a period of five years. He also submits that if the theatre is sold then the petitioner will lose his tenancy rights, and therefore, he submits that the auction itself is illegal and contrary to law.

3. We have heard the learned Government Pleader also.

4. Inasmuch as the Commercial Tax Department proceeded to recover the arrears of sales tax prior to the lease, it is always open for them to recover the same by putting the theatre to auction, but however, the auction conducted by the Commercial Tax

authorities will be subject to the tenancy rights of the petitioner.

5. With this observation, the Writ Petition is disposed of. No costs.

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G. BIKSHAPATHY, J

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P.S. NARAYANA, J

Date: 24.03.2005

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To

1 The Deputy Commercial Tax Officer No.2, Gudivada, Krishna District.
2 2 CCs to the G.P. for Commercial Tax, High Court of A.P., Hyderabad (OUT)

3 2 CD copies

4 1 CC to MR.BHASKAR REDDY VEMIREDDY (OUT)